

ARTICLE XVI

WIND ENERGY CONVERSION SYSTEMS

SITING REGULATIONS

16.0 PURPOSE AND INTENT

16.0.1 Purposes

The purposes of this Article are to:

- A. Assure that the development and production of wind-generated electricity in Randolph County, Indiana, is safe and effective;
- B. Facilitate economic opportunities for local residents; and
- C. Develop standards for wind generated energy, utilize natural resources and ecologically sound energy sources, support Indiana's alternative energy sources potential and other such economic development tools.

16.0.2 Intent

The intentions of the Wind Energy Conversion Systems (WECS) siting regulations are to provide a regulatory scheme for the development, construction and operation of WECS in Randolph County, Indiana to establish reasonable guidelines and restrictions on the development, construction, operation, and decommissioning of WECS, wind farms and wind turbine generators (WTG), and to preserve the health and safety of Randolph County residents and the general public.

16.1 APPLICABILITY

- A. The provisions of this Article are applicable to those zoning districts which allow or may allow WECS and to govern the siting, development, operation and decommissioning of WECS, which generate electricity to be sold in the wholesale market or retail market, or which are utilized to generate electricity for private use and public use.
- B. When any part of the development, construction, operation or decommissioning of a WECS requires action, recommendations, hearing and/or decision pursuant to the provisions of the Unified Zoning Ordinance of Randolph County, Indiana (Zoning Ordinance), notice shall be given pursuant to the Zoning Ordinance and the applicable By-Laws of the Area Planning Commission of Randolph County, Indiana (APC) and the Rules of Procedure (Rules) of the Board of Zoning Appeals of Randolph County, Indiana (BZA).

- C. Provisions of this Article or other parts of the Zoning Ordinance which are specifically made applicable to a specific type of WECS, e.g. commercial, shall apply to that type of WECS. Provisions without reference to a specific type of WECS, shall apply to all WECS unless determined otherwise by the Executive Director of the APC. The Executive Director of the APC may, upon proper notice, assign any question, general or as to a specific WECS application, for discussion and/or instruction from the BZA. An applicant for a WECS may appeal the requirement, decision or determination of the Executive Director in the manner prescribed by applicable Rules of the BZA, the Zoning Ordinance and statute(s).

16.2 PROHIBITION

No person shall construct, operate, or locate a WECS and/or Meteorological Tower or Operational Support Meteorological Tower within Randolph County without having fully complied with the provisions of this Article and all other applicable provisions of said Zoning Ordinance and any applicable Rules of the BZA and By-Laws of the APC.

16.3 CONFLICT WITH OTHER REGULATIONS

Nothing in this Article is intended to pre-empt other applicable state and federal laws or regulations, including, but not limited to, compliance with all Federal Communications Commission (FCC) and all Federal Aviation Administration (FAA) rules and regulations and with the notification requirements of the FCC and FAA. Nor shall any provisions of this Article interfere with, abrogate, or annul any other ordinance, rule, regulation, statute or other provision of law. In the event that any provision of this Article imposes restrictions different from any other ordinance, rule, regulation, statute, or provision of law, the provision which is more or most restrictive or which imposes the higher or the highest standard(s) shall control.

16.4 DISTRICT REGULATIONS

16.4.1 Location

Commercial WECS, non-commercial WECS, micro-WECS, Meteorological Tower and Operational Support Meteorological Tower are allowed, may be allowed, or shall not be allowed, in zoning districts as prescribed by Appendix A of this Article.

16.4.2 Height

A non-commercial WECS, meteorological tower, or operational support meteorological tower greater than two hundred (200') feet in height shall require the filing for a variance by petition and hearing before the BZA pursuant to this Zoning Ordinance. For commercial WECS, there is no restriction on height, except those height limitations imposed by FAA rules and regulations. A micro-WECS shall not exceed sixty (60) feet in height except after a petition and hearing for a variance before the BZA pursuant to this Zoning Ordinance.

16.4.3 Horizontal extension

The furthest horizontal extension of a WECS including, but not limited to, guy wires, provided, however, excepting the WECS collection system, WECS transmission lines and WECS access roads, shall not extend into a setback which is otherwise required for the zoning district in which the WECS is located or into a setback required for an adjacent and adjoining zoning district nor be less than twelve (12') feet from any structure or public right-of-way easement for any above-ground telephone line, electrical transmission line, electrical distribution line or other above ground communication or transmission line.

16.5 SETBACK REQUIREMENTS

16.5.1 Minimum setback distances for COMMERCIAL Wind Turbine Generator Tower

Distance for a commercial WTG tower shall be measured from the center point of each WTG tower. The distance from said center point to each of the following shall be:

Distance from:	Minimum Setback Distance
Property line.	One and one-tenth (1.1) times the total height (measured from where the blade tip is at its highest point) to non-participating landowner's property line. A non-participating landowner may waive this requirement by written waiver. This setback requirement is waived if the affected adjoining or adjacent landowner is a participating landowner sharing a common property line with another participating landowner.
Dwelling: to the nearest corner of a dwelling.	One thousand (1,000) feet. ¹
Line of public road right-of-way.	One and one-tenth (1.1) times the total height (measured from where the blade tip is at its highest point), provided that the distance shall be no less than three hundred and fifty (350') feet. ²
Line of other rights-of-way, including, but not limited to, railroads and utility easements, excluding private access easements.	One and one-tenth (1.1) times the total height (measured from where the blade tip is at its highest point), provided that the distance shall

¹ The setback for dwellings shall be reciprocal in that the nearest corner of a dwelling shall be constructed no less than one thousand (1,000') feet measured from the center of a WTG tower.

² The setback shall be measured from future public rights-of-way width if a road improvement plan or expansion plan of a public road exists at the time of application. Applicant shall have the responsibility of inquiry of the appropriate authority to determine if any public road improvement plan or expansion plan exists at the time of filing its application and shall set forth all relevant information including, but not limited to, that there are no improvement plans or expansion plans.

	be no less than three hundred and fifty (350') feet.
Wetlands, as defined by the U.S. Army Corps of Engineers: the nearest point of the wetland.	As determined by a permit obtained from the Army Corps of Engineers
Shoreline of all rivers	One-half (1/2) mile
Incorporated limits of a municipality.	Fifteen hundred (1,500') feet from the incorporation line.
Above-ground electric transmission line.	One and one-tenth (1.1) times the total height (measured from where the blade tip is at its highest point).

16.5.2 Commercial WECS Power Collection and Transmission System

A. WECS Substation

For all substations, setbacks from property lines are waived if the affected adjacent or adjoining landowners sharing the common property line are all participating landowners. The substation set backs shall be the same as those of a commercial WTG tower if the affected adjacent or adjoining landowner sharing a common property line is a non-participating landowner. A non-participating landowner may waive this set back requirement by written waiver.

B. Poles and Underground Wiring

For all poles carrying overhead wiring and for underground wiring connecting commercial WTG towers to a substation for connection to a utility's electric transmission line, there are no setback requirements from property lines of participating or non-participating landowners so long as the poles and underground wiring are located within a recorded easement for such purpose.

16.5.3 Minimum setback distances for NON-COMMERCIAL Wind Turbine Generator Tower and MICRO-Wind Turbine Generator Tower

Distance for a non-commercial WTG tower and micro-WTG tower shall be measured from the center point of each non-commercial WTG tower and center point of a micro-WTG tower. The distance from each of the following shall be:

Distance from:	Minimum Setback Distance
Property line.	One and one-tenth (1.1) times the total height (measured from where the blade tip is at its highest point), provided that the distance is no less than the required yard setback prescribed for that zoning district.

Dwelling: to the nearest corner of a dwelling.	One and one-tenth (1.1) times the total height (measured from where the blade tip is at its highest point). ³
Line of public road right-of-way.	One and one-tenth (1.1) times the total height (measured from where the blade tip is at its highest point), provided that the distance shall be no less than the required yard setback prescribed for that district. ⁴
Line of other rights-of-way, including, but not limited to railroads and utility easements excluding private access easements.	One and one-tenth (1.1) times the total height (measured from where the blade tip is at its highest point), provided that the distance shall be no less than the required yard setback prescribed for that district.
Wetlands, as defined by the U.S. Army Corps of Engineers: the nearest point of the wetland.	As determined by a permit obtained from the Army Corps of Engineers.
Shoreline of all rivers.	One half (1/2) mile
Above-ground electric transmission line.	One and one-tenth (1.1) times the total height (measured from where the blade tip is at its highest point).

16.5.4 Minimum setback distances for all Meteorological Towers and Operational Support Meteorological Towers

Distance from:	Minimum Setback Distance
Property line, measured from the center of the Meteorological Tower or Operational Support Meteorological Tower to the property line	One and one-tenth (1.1) times the total height of the Meteorological Tower or Operational Support Meteorological Tower, provided that the distance is no less than the required yard setback. The setback requirement is waived if the affected adjacent or adjoining is a participating landowner sharing a common property line with another participating landowner(s). A non-participating landowner may waive this requirement by written waiver.

³ The setback for dwellings shall be reciprocal in that the nearest corner of a dwelling shall be constructed no less than one and one-tenth (1.1) times the total height of the WTG tower (measured from where the blade tip is at its highest point.)

⁴ The setback shall be measured from future public rights-of-way width if a road improvement plan or expansion plan of a public road exists at the time of application. Applicant shall have the responsibility of inquiry of the appropriate authority to determine if any public road improvement plan or expansion plan exists at the time of filing its application and shall set forth all relevant information including, but not limited to, that there are no improvement plans or expansion plans.

Dwellings, measured from the center of the Meteorological Tower or Operational Support Meteorological Tower to the nearest corner of the dwelling.	One and one-tenth (1.1) times the total height of the Meteorological Tower or the Operational Support Meteorological Tower. ⁵
Public road right-of-way, measured from the center of the Meteorological Tower or the Operational Support Meteorological Tower to the edge of the right-of-way	One and one tenth (1.1) times the total height of the Meteorological Tower or the Operational Support Meteorological Tower, provided that the distance is no less than the required yard setback. ⁶
Other rights-of-way, such as railroads and public utility easements, excluding private access easements, measured from the center of the Meteorological Tower or the Operational Support Meteorological Tower to the edge of the right-of-way	One and one-tenth (1.1) times the total height of the Meteorological Tower or the Operational Support Meteorological Tower, provided that the distance is no less than the required yard setback

16.6 SAFETY DESIGN AND INSTALLATION STANDARDS

16.6.1 Equipment type

A. Turbines:

All turbines shall be constructed of commercially available equipment and in conformance with subsection 16.6.4(A).

B. Meteorological Towers and Operational Support Meteorological Towers: All Meteorological Towers or Operational Support Meteorological Towers may be guyed.

C. Experimental, or proto-type equipment:

Experimental or proto-type equipment still in testing which does not fully comply with industry standards, may be approved by the BZA after notice and hearing pursuant to the variance procedures of this Zoning Ordinance.

16.6.2 Industry standards and other regulations

⁵ The setback for dwelling shall be reciprocal in that the nearest corner of a dwelling shall be constructed no less than one and one-tenth (1.1) times the total height of the Meteorological Tower or Operational Support Meteorological Tower measured from the center point of any such tower.

⁶ The setback shall be measured from future public rights-of-way width if a road improvement plan or expansion plan of a public road exists at the time of application. Applicant shall have the responsibility of inquiry of the appropriate authority to determine if any public road improvement plan or expansion plan exists at the time of filing its application and shall set forth all relevant information including, but not limited to, that there are no improvement plans or expansion plans.

All WECS shall conform to applicable industry standards, as well as all local state and federal regulations. An applicant shall submit certificate(s) of design compliance that wind turbine manufacturers have obtained from Underwriters Laboratories, Det Norske Veritas, Germanischer Lloyd Wind Energie, or an equivalent third party.

16.6.3 Controls and brakes

(A) Braking system:

All WECS shall be equipped with a redundant braking system. This shall include both aerodynamic over speed controls (including variable pitch, tip, and other similar systems) and mechanical brakes. Stall regulation shall not be considered a sufficient braking system for over speed protection.

(B) Operation mode:

All mechanical brakes shall be operated in a fail-safe mode and in accordance with manufacturer's specifications.

(C) Subparagraphs (A) and (B) are current standards, and any other braking system or operation mode which is utilized may be approved after notice and hearing before the BZA for a variance pursuant to the Zoning Ordinance.

16.6.4 Electrical components

(A) Standards

Electrical components of all WECS shall conform to applicable local, state and national codes, and any relevant industry and national standards and be in conformance with industry standards for similar WECS in the United States.

(B) Cables and Lines:

All cables and lines, except transmission cables and lines, shall be buried no less than forty-two (42") inches underground. For any installation method of cables and lines except as provided herein, applicant shall apply for a variance before the BZA pursuant to this Zoning Ordinance.

16.6.5 Color and finish

In addition to all applicable FAA requirements, the following shall also apply:

A. Wind turbines and towers:

- (i) Color: All wind turbines and towers that are part of a WECS shall be white, grey, or other non-obtrusive color.
- B. Blades:
 - (i) All blades shall be white, grey, or other non-obtrusive color. Blades may be black in order to facilitate deicing.
- C. Finishes:
 - (i) Finishes shall be matte or non-reflective.
- D. Exceptions:
 - (i) A variance may be applied as provided by this Zoning Ordinance by the applicant for Meteorological Towers and Operational Support Meteorological Towers if there exists concerns relative to aerial spray applicators.

16.6.6 Warnings

A. COMMERCIAL WECS:

For all commercial WECS, a sign or signs shall be posted on each WTG tower, pad-mounted transformer or otherwise and substation warning of high voltage. Signs with emergency contact information shall also be posted on each WTG tower or at other suitable and conspicuous locations on the WECS property. All access roads to a commercial WECS shall have posted in a conspicuous location the Emergency 911 Address road sign indicating such address of the WECS property upon which the access road is located. All signage required herein shall have a distinct, high contrast background and shall be of weather proof paint or other weather proof material.

B. GUY WIRES AND ANCHOR POINTS:

For all guyed towers, one of the following alert and warning methods shall be used at each anchor point:

1. Visible and reflective objects, which may include, but are not limited to, flags, plastic sleeves, reflectors, or reflective tape placed on, or at, each anchor point of guy wires and along the innermost guy wires no less than fifteen (15') feet above ground level at the said guy wire locations.
2. Visible fencing not less than four (4') feet in height installed around each anchor point of guy wires.

C. NON-COMMERCIAL WECS AND MICRO-WECS

The following notices shall be clearly visible on all non-commercial WECS and micro-WECS.

1. “No Trespassing” signs shall be securely attached to each side of any perimeter fence.
2. “Danger” signs shall be securely posted at the height of five (5’) feet on each WTG tower and on each side of all WECS accessory structures and facilities.
3. A sign shall be securely posted on each WTG tower clearly displaying an emergency telephone number(s) in weather proof paint or other weather proof material.
4. All manual electrical and/or overspeed shutdown disconnect switch(es) shall be clearly labeled. Such labels shall be printed in weather proof paint or other weather proof material.
5. All signage required herein shall have a distinct, high contrast background and shall be of weather proof paint or other weather proof material.

D. METEOROLOGICAL TOWERS AND OPERATIONAL SUPPORT METEOROLOGICAL TOWERS

All Meteorological Towers and Operational Support Meteorological Towers shall be in compliance and have all FAA required aviation warnings. A variance may be applied pursuant to this Zoning Ordinance to paint aviation warnings on all Meteorological Towers and Operational Support Meteorological Towers.

16.6.7 Climb prevention

All commercial WTG tower designs, and as the same are actually constructed, shall include features to deter unauthorized climbing or have anti-climbing devices which shall include as minimum standards:

1. Fencing no less than six (6’) feet in height with locking portals; fencing shall enclose the entire tower; or,
2. Anti-climbing devices fifteen (15’) feet vertically from the base of the WTG tower; or,
3. Locked WTG tower doors.

16.6.8 Blade clearance

The minimum distance between the ground and any protruding rotor blade(s) utilized on a commercial WTG tower shall be twenty-five (25') feet, as measured from the highest point of the ground within the arc of the blades and the lowest point of the arc of the blades. The minimum distance between the ground and any protruding rotor blade(s) which blades do not exceed twenty (20') feet in diameter, utilized on any and all other WTG towers shall be a minimum of fifteen (15') feet, as measured at the highest point of the ground within the arc of the blades and the lowest point of the arc of the blades. In all instances, the minimum ground to blade clearance shall be increased as necessary to provide for vehicle clearance in locations where over-sized vehicles might travel.

16.6.9 Lighting

(A) Intensity and frequency:

All WTG tower lighting, including, but not limited to, lighting intensity and frequency of strobe, shall adhere to, but not exceed, requirements established by FAA permits and regulations as the same are now or as the same may from time to time be amended.

(B) Shielding:

Except with respect to lighting required by the FAA, lighting may require shielding so that no glare extends substantially beyond any WTG tower and WECS structures and facilities.

16.6.10 Materials handling, storage and disposal

(A) Solid wastes:

All solid wastes whether generated from supplies, equipment, parts, packaging, operation, maintenance of the facility, Decommissioning Plan and Decommissioning Agreement or otherwise, including, but not limited to, old parts and equipment related to the construction, operation, maintenance, Decommissioning Plan and Decommissioning Agreement of any WECS shall be removed from the site promptly and disposed of in accordance with all federal, state and local laws and ordinances. The WECS owners and WECS operators shall have the same responsibility for compliance hereof.

(B) Hazardous materials:

All hazardous materials or hazardous waste related to the construction, operation, maintenance, Decommissioning Plan and Decommissioning Agreement of any WECS or otherwise generated by the facility shall be handled, stored, transported and disposed of in accordance with all applicable local, state and federal laws. The

WECS owner and the WECS operator shall have the same responsibility for compliance hereof.

16.7 OTHER APPLICABLE STANDARDS

16.7.1 Guyed wire anchors

No guyed wire anchors shall be allowed within any public road right-of-way setback.

16.7.2 Sewer and water

All WECS facilities shall comply with the septic system and well regulations as currently required or as hereinafter amended, of the Randolph County Health Department and the State of Indiana Department of Public Health.

16.7.3 Noise

The noise level of a micro WECS, a commercial WECS or a non-commercial WECS shall be no greater than sixty (60) decibels as measured from the residence nearest any part of the micro WECS, the commercial WECS or the non-commercial WECS. This level may only be exceeded during short-term events such as utility outages and/or severe weather conditions.

16.7.4 Utility interconnection

A WECS, if interconnected to a utility system, shall meet the requirements for interconnection and operate as prescribed by the applicable regulations of the electrical utility, as the regulations now exist and as the same are from time to time amended.

16.7.5 Signage

In addition to complying with Sign Standards, provided in other Articles of the Zoning Ordinance, the following signage regulations and standards shall also apply. In the event that one of the following regulations or standards conflicts with another sign regulation or standard prescribed by this Zoning Ordinance, the more/most restrictive regulation or standard shall apply.

(A) Surface area:

No sign shall exceed sixteen (16') square feet in surface area.

(B) Height:

No sign shall exceed eight (8') feet in height.

(C) Manufacturer's or Owner's Company Name and/or Logo:

The manufacturer's and/or owner's company name and/or logo may be placed upon the compartment containing the electrical equipment.

(D) Development Signs:

An identification sign relating to a wind farm development may be located on each side of the total project area, provided that there shall be no more than one (1) sign located on any side of the wind farm development unless additional identification signs are required to provide reasonable notice to the general public of the wind farm development area.

(E) Other signs and logos:

No other signs or logos shall be placed or painted on any WTG tower, except as required or allowed by this Article. In the event of a special circumstance peculiar to any wind farm development, a variance may be granted for such additional or alternative signage upon proper notice of hearing and hearing before the BZA for a variance as provided by the provisions of the Zoning Ordinance.

All signage required or permitted by this Article shall be made of industry accepted or required material and constructed to industry accepted standards. In the absence of industry accepted or required material or industry accepted construction standards, said signage shall be made of materials and constructed in a manner to be durable and long lasting. The same shall be painted or made of material with a distinct, high contrast background and be weather proof paint or other weather proof material to promote safety and protect the public from hazards and potential hazards.

16.7.6 Collection cable/lines

Collection cables and lines and communication lines installed as part of any WECS shall not be considered essential services.

16.7.7 Other Appurtenances

No appurtenances other than those associated with the WECS construction, operations, maintenance, decommissioning, removal, and permit requirements shall be connected to any WTG tower except after notice of hearing and hearing before the BZA pursuant to the applicable Article(s) of this Zoning Ordinance.

16.8 OPERATION AND MAINTENANCE

16.8.1 Physical Modifications

Any physical modification to any WECS or a part thereof which materially alters the mechanical load, mechanical load path, or major electrical components shall require re-certification by all appropriate regulatory authorities. Like-kind replacements shall not require re-certification, unless required by a regulatory authority. Prior to making any material physical modification, the owner or operator of such WECS shall confer with the Randolph County Building Commissioner, Executive Director of the APC, Randolph County Surveyor, Randolph County Highway Department Superintendent, and any other appropriate regulatory authority as to whether or not the proposed physical modification requires re-certification of such WECS.

16.8.2 Interference

Prior to the commencement of construction of a commercial WECS, a communications study shall be conducted by the applicant, owner and/or operator to determine whether or not the operation of the WECS may produce interference with public or public serving utility microwave transmissions and if so, to determine the most effective method to mitigate interference with public or public serving utility microwave transmissions. If necessary, as outlined hereinafter, the applicant, owner and/or operator shall as part of the commercial WECS application process and the commercial WECS construction implement or incorporate the means determined to be the most effective method to mitigate interference with electromagnetic communications including, but not limited to, radio, telephone, microwaves, or television signals caused by the commercial WECS. Applicant, owner and/or operator shall comply with the following:

(A) Preconstruction requirements:

- (i) The applicant, owner, and/or operator shall complete a communications study to, among other things, determine the most effective method to mitigate interference with any public or public serving utility microwave transmissions.

(B) Construction:

- (i) The applicant, owner, and/or operator, as part of a commercial WECS construction, shall implement the method or methods determined by the communications study to be the most effective method to minimize interference with public or public serving utility microwave transmissions.

(C) Post construction:

- (i) If, after construction of a commercial WECS, the owner and/or operator receives a written complaint related to interference with the broadcast and/or reception of residential television, telecommunication or microwave

transmissions, the WECS owner and WECS operator shall take all additional reasonable steps to mitigate such interference. Interference with private telecommunications system including, but not limited to, Global Positioning System, shall be between the WECS owner and/or WECS operator and the complainant.

(D) Failure to remedy a complaint: penalty

- (i) If an agreement to remedy a known interference is not reached within one hundred eighty (180) days from the date of the written complaint or if an agreement to remedy is reached, however, the agreement is not implemented and completed within thirty (30) days of the date of such agreement i.e. the remedy is not fully implemented by the owner and/or operator of the commercial WECS causing such interference, unless all parties agree in writing to an extension of time, the complainant in the event that the interference is other than with a private telecommunications systems, may file a complaint with the Executive Director of the APC. The Executive Director shall make an appropriate investigation and determine if the complaint is meritorious, and if so, refer the same to the BZA for determination as to whether or not the BZA seek remedies available to it including, but not limited to, fines and/or injunctive relief, temporary or permanent, which may result in an order requiring the offending WECS to be enjoined from operating. The BZA shall have no jurisdiction with regard to a complainant regarding interference with private telecommunications system and the WECS owner and/or operator, however, nothing in the Zoning Ordinance shall preclude such a complainant from seeking any remedy available to a complainant either at law or in equity, and as there is no administrative remedy for such a complainant, there is no prerequisite administrative action i.e. no exhaustion of an administrative remedy, to preempt or prevent direct action at law or equity by the complainant against the WECS owner and/or operator.
- (ii) In order for a complainant to have a valid complaint, the interference with the broadcast and/or reception of residential television, telecommunication, and/or a microwave transmission which is the subject matter of the complaint, such residential television, telecommunication, or microwave transmission shall have been “in service” on or before the date on which the WECS or any part of the WECS causing such interference is issued an Improvement Location Permit. For purposes of this provision, residential television, telecommunication or microwave transmission, the same shall be considered continuous i.e. “in service” if the preceding owner(s) or possessor(s) of the affected real estate had residential television, telecommunication, and/or microwave transmission on or before the date of issuance of the Improvement Location Permit; notwithstanding a reasonable break not to exceed ninety (90) days of “in service” in order to provide a new owner(s) or possessor(s) the opportunity to obtain such services. The break of “in service” either all or

part may occur prior to, or subsequent to, the date of issuance of the Improvement Location Permit, however, the same shall not exceed ninety (90) days. Provided, further, the complainant must have comparable service to that of the preceding owner(s) or possessor(s). The Executive Director shall make this provision part of the investigation of the complaint.

16.8.3 Declaration of public nuisance

Any WECS declared unsafe by the Randolph County Building Commissioner by being in breach of, or, out of compliance with its WECS permit(s) may seek to be rehabilitated and declared safe by appropriate repair(s) and other essential steps necessary to eliminate the breach(es) so as to be in compliance with such WECS permit(s). A WECS declared by the Randolph County Building Commissioner by reason of inadequate maintenance, dilapidation, obsolescence, fire hazard, damage, abandonment or as provided herein to be determined unsafe, is hereby declared to be a public nuisance. In the absence of such repair and rehabilitation in the time determined reasonable by the Randolph County Building Commissioner which time shall not exceed one hundred eighty (180) days, such WECS shall be demolished and removed in accordance with the approved Decommissioning Plan and Decommissioning Agreement.

16.9 DECOMISSIONING

16.9.1 Decommissioning Plan and Agreement

Prior to receiving an Improvement Location Permit and Building Permit, under this Ordinance, the applicant, owner and operator shall submit a Decommissioning Plan to the County and shall enter into a Decommissioning Agreement with the County outlining the anticipated means, costs and method of payment of all costs in carrying out such Decommissioning Agreement at the end of the WECS life or the life of any part of a WECS, upon becoming irreparably damaged, upon becoming an abandoned use, or upon being declared a public nuisance as provided by Section 16.8.3.

16.9.2 Discontinuation and abandonment

A WECS shall be considered an abandoned use after one (1) year without energy production, unless a plan developed by the WECS owner and WECS operator is submitted to, and approved by, the Randolph County Building Commissioner outlining the necessary procedures and time schedule for commencing or returning the WECS to energy production. Failure by the WECS owner and/or operator to commence, energy production at such WECS or return such WECS to energy production within the time schedule which has been approved by Randolph County Building Commissioner to conclude the necessary energy production procedures, the WECS shall be considered an abandoned use.

16.9.3 Removal

The WECS owner and/or the WECS operator is required to remove all physical material pertaining to the WECS and all improvements of said WECS which is forty (40'') inches or less below ground level and removal to not less than forty (40'') inches for any WECS facility which is more than forty (40'') inches below ground level. All materials shall be so removed within three hundred sixty five (365) days of the discontinuation of energy production subject to 16.9.2, irreparable damage to the facility, abandonment of the WECS, or is an unrehabilitated WECS which has been declared to be a public nuisance pursuant to 16.8.3 and shall, within said time limit, also require the WECS owner and/or WECS operator to restore the WECS area to as near as practicable the condition of the WECS site immediately prior to the beginning of construction of such WECS. All expenses involved in such removal and restoration shall be paid by the WECS owner and WECS operator, or done by Randolph County at the WECS owner's expense and WECS operator's expense as specifically provided by the Decommissioning Agreement. The WECS access roads built on the real property upon which WECS was situated or any access road built to facilitate the WECS in any manner shall be removed; provided, however, that if the then real property owner upon which an access road is situated desires that all or any reasonable part(s) of such access road(s) remain, the owner and operator shall not be required to remove such roads. This provision regarding access road removal shall also apply to Randolph County in the event that Randolph County should carry out the WECS decommissioning.

16.9.4 Written notices

Prior to implementation of any procedures or remedy for the resolution of any WECS owner's and/or operator's failure to decommission the WECS pursuant to the Decommissioning Agreement and the Ordinance, the Board of County Commissioners shall first provide written notice to the owner and/or operator, setting forth the alleged default(s). Such written notice shall provide the owner and/or operator a reasonable time period not to exceed sixty (60) days, except upon such longer time to which all said parties agree, for good faith negotiations between the WECS owner and/or operator and the Board of County Commissioners or its duly appointed representative, to resolve the default(s). In the event the negotiations fail to resolve the default issue(s), either party may pursue any and all remedies available by the terms of the Zoning Ordinance, the Decommissioning Plan and Decommissioning Agreement.

16.9.5 Costs incurred by the County

In the event the owner and/or operator shall fail to decommission the WECS in accordance with the Zoning Ordinance and the Decommissioning Agreement, the owner and/or operator shall pay all costs incurred by the County to remove the WECS. The County shall be entitled to apply the salvage value of the WECS to the costs of removal.

16.10 LIABILITY INSURANCE

The owner and operator of a WECS shall maintain a general liability policy covering death, bodily injury and property damage and shall be required to name Randolph County, Indiana, its agents and employees as additional insureds, and said policy shall carry dollar amounts satisfactory to the Board of County Commissioners and with agreed upon dollar amount limits per occurrence, aggregate coverage, and deductible amounts, all of which shall be agreed upon by the owner and operator and said Board of County Commissioners and provided in the Decommissioning Agreement or other appropriate plan or agreement between the Board of County Commissioners and WECS owner and WECS operator.

16.11 APPLICATION PROCEDURES

Permits and variances shall be applied for and reviewed under the procedures established by this Ordinance.

16.11.1 Applications for All Wind Energy Conversion Systems

An application for all WECS and WECS facilities shall include the following information:

(i) Contact Information of WECS Applicant:

The name(s), address(es), telephone number(s) and e-mail address(es) (if available) of the applicant(s), together with a description of the applicant's business structure and overall role in the proposed project.

(ii) Contact Information of WECS Owner:

The names(s), address(es), telephone number(s) and e-mail address(es) (if available) of the WECS owner(s), together with a description of the owner's business structure and overall role in the proposed WECS, and documentation of real estate ownership of any real property upon which any part of the proposed WECS is to be located. The WECS owner shall inform the Executive Director of the APC of any change of WECS ownership, in whole or in part, and shall furnish the required information regarding such owner.

(iii) Contact Information of WECS Operator:

The name(s), address(es), telephone number(s) and e-mail address(es) (if available) of the operator(s), as well as a description of the operator's business structure and overall role in the proposed project. The WECS operator shall inform the Executive Director of the APC of any change of the WECS operator and furnish the required information regarding such operator.

(iv) Legal Description:

The legal description and the 911 Emergency Address of the real property upon which the WECS is to be located and general location of the WTG towers and WECS facilities and improvements on such property.

(v) WECS Description:

A WECS description, including to the extent possible, information on each WTG tower proposed, including, but not limited to, the following:

1. Number of turbines;
2. Type of towers;
3. Name plate generating capacity;
4. WTG tower height;
5. Rotor diameter;
6. Total Height;
7. Anchor base;
8. The means of interconnecting with the electrical grid;
9. The potential equipment manufacturer(s); and,
10. All accessory structures.

(vi) Site Plan:

A site plan, drawn to scale, including distances pertaining to all applicable setback requirements. All drawings shall be at a scale of one (1") inch equals thirty (30') feet (1 inch = 30 feet). Any other scale must be approved by the Executive Director of the APC. No individual sheet or drawing shall exceed twenty four (24") inches by thirty six (36") inches (24 inches by 36 inches) without the prior consent of said Executive Director.

(vii) Engineering Certification:

For all WECS and WECS facilities, the manufacturer's engineer or another qualified registered professional engineer shall certify, as part of the Building Permit Application, that the turbine, foundation and WTG tower designs of the WECS are within accepted professional standards, given local soil and climate conditions. An engineering analysis of each WTG tower showing compliance with the applicable regulations and certified by a licensed professional engineer shall also be submitted. The analysis shall be accompanied by standard drawings of the wind turbine structure, including, but not limited to, the WTG tower, base, and footings.

(vii) Proof of Correspondence and Cooperation with Wildlife Agencies:

For the purposes of demonstrating compliance with required permits, the applicant shall provide written documentation that the applicant is in direct correspondence, cooperation and in compliance and shall remain in compliance with all regulations and requirements of the U.S. Fish and Wildlife Service and the Indiana Department of Natural Resources.

(ix) Other Information:

All other information reasonably requested by the BZA, APC and Executive Director of the APC.

16.11.2 Applications for Non-Commercial Wind Energy Conversion Systems

In addition to the application requirements listed in 16.11.1, applications for non-commercial WECS shall include, but not be limited to, the following information:

(i) Demonstration of Energy Need:

The primary purpose of the production of energy from a non-commercial WECS shall be to serve the energy needs of the tract or parcel of real property upon which the WECS is to be located. The applicant(s) shall demonstrate how much energy is needed and how the proposed size and number of the WTG towers fulfill this need. Net-Metering may be allowed, but net metering to the extent that the primary purpose of the applicant's WECS is to produce energy in excess of demonstrated need shall not be the sufficient basis upon which to approve or permit a non-commercial WECS.

(ii) Statement of FAA compliance and Local Airport Board Approval:

A statement of compliance with all applicable FAA rules and regulations, including, but not limited to, any necessary approvals for installations within close proximity to an airport and a copy of the FAA's response to a submitted Notice of Proposed Construction or Alteration (FAA Form 7460-1). A letter from the local aviation board stating its approval of the siting of the WTG tower(s) and WECS facilities.

(iii) Utility notification:

No non-commercial WECS application shall be approved until written evidence has been provided that each local utility company has been informed of the applicant's intention to install an interconnected customer-owned generator. Off-grid systems shall be exempt from this requirement.

(iv) Compliance with National Electrical Code:

A line drawing of the electrical components in sufficient detail to allow for a determination that the manner of installation conforms to the National Electrical Code. (This information is frequently supplied by the manufacturer.)

- (v) Noise profile in conformity with Subsection 16.7.3

16.11.3 Applications for Commercial Wind Energy Conversion Systems

In addition to the application requirements listed in 16.11.1, applications for commercial WECS shall include the following information.

- A. A preliminary site plan:

In place of a site plan provided by 16.11.1(vi), a commercial WECS shall include a preliminary site plan, drawn to scale as provided in 16.11.1(vi), including distances, and certified by a registered land surveyor, and shall illustrate the following:

1. Property lines upon tract(s) subject to the application, together with property lines and with the names of owners of record of each adjacent or adjoining tract(s).
2. The latitude and longitude of each individual wind turbine, along with individual identification of each WECS.
3. Dimensional representation of the structural components of the tower construction including, but not limited to, the base and footings.
4. Location and name/number of WECS public road and any WECS access road(s).
5. Statement of FAA compliance and Local Airport Board Approval:

A statement of compliance with all applicable FAA rules and regulations, including, but not limited to, any necessary approvals for installations within close proximity to an airport and a copy of the FAA's response to a submitted Notice of Proposed Construction or Alteration (FAA Form 7460-1). A letter from the local aviation board stating its approval of the siting of the WTG tower(s) and WECS facilities.

6. Substations: dimensions and location
7. Electrical cabling
8. Ancillary equipment

9. Any structure within one quarter (1/4) mile of the proposed WECS.
 10. Setback lines
 - (a) Distances from each individual WTG tower to each setback requirement.
 11. Location and number/name of all roads which abut, or traverse the proposed site.
 12. The location of all above-ground utility lines upon public property, upon a right-of-way, or upon private property within a distance of two (2) times the height of any proposed WECS structure.
 13. The location of any historic or heritage sites as recognized by the Division of Historic Preservation and Archeology of the Indiana Department of Natural Resources, within one (1) mile of a proposed WECS.
 14. The location of any wetlands based upon a delineation plan prepared in accordance with the applicable U.S. Army Corps of Engineers requirements and guidelines, within one (1) mile of a proposed WECS.
 15. All other information reasonably requested by the BZA, APC and Executive Director of the APC.
- B. Topographic map
- A USGS topographical map, or map with similar data, of the property and the surrounding area, including, but not limited to, any other WECS property or WTG tower within ten (10) rotor distance, but no less than a one quarter (1/4) mile radius from the proposed WECS site, with contours of not more than five (5') foot intervals.
- C. Noise profile in conformity with Subsection 16.7.3.
- D. Location of all known WTG towers within a one (1) mile radius of the proposed WECS, including a written description of the potential impacts on any existing WECS within said one (1) mile radius and wind resources on adjacent or adjoining properties whether or not there are existing WECS located upon the adjacent or adjoining property.
- E. Copy of the Communications Study.
- F. Landowner Agreements

1. A Memorandum of Agreement for all agreements of any description signed by participating landowners authorizing the placement of the identified WECS on landowner's property.
2. Fully executed Setback Waiver Agreements, if applicable, signed by non-participating landowners for adjoining or adjacent property.
3. An executed copy of any other waiver agreement signed by participating or non-participating landowner(s).

16.11.4 Applications for all Meteorological Towers and Operational Support Meteorological Tower

In addition to the application requirements listed in 16.11.1, applications for Meteorological Towers And Operational Support Meteorological Towers shall include the following information.

- A. A copy of the agreement by which the landowner has authorized the placement of a Meteorological Tower and/or Operational Support Meteorological Tower on landowner's property. All confidential information may be redacted from such agreement.

- B. Preliminary site plan

A preliminary site plan with distances drawn to the appropriate scale set forth in 16.11.1 (vi) including, but not limited to, the following:

1. Property lines upon tract(s) subject to the application, together with property lines and with the names of owners of record of each adjacent or adjoining tract.
2. The latitude and longitude of each individual Meteorological Tower or Operational Support Meteorological Tower.
3. Dimensional representation of the structural components of the tower construction, including, but not limited to, the base and footings.
4. Electric cabling.
5. Ancillary equipment.
6. Required setback lines.
 - (i) Distance from each individual Meteorological Tower or Operational Support Meteorological Tower to each setback requirement.

7. Location and number/name of all roads which abut or traverse the proposed site.
 8. The location of all above-ground utility lines upon public property, upon a right-of-way or upon private property within a distance of two (2) times the height of any proposed Meteorological Tower or Operational Support Meteorological Tower.
 9. The location of all underground utility lines.
 10. All other information reasonably requested by the BZA, APC and the Executive Director of the APC.
- C. BZA approval upon petition and hearing for a variance pursuant to this Zoning Ordinance for any Meteorological Tower or Operational Support Meteorological Tower which is greater than two hundred (200') feet in height.

16.11.5 Aggregated WECS Applications

Aggregated WECS may jointly submit a single application and be reviewed under joint proceedings, including notices, hearing, and reviews, and as appropriate, approvals. All permits shall be issued pursuant to Article 16.11.7.

16.11.6 Fees

- A. Commercial WTG towers, non-commercial WTG towers, micro WTG towers Meteorological Towers Operational Support Meteorological Towers, and any WECS accessory buildings, structures or facilities:

As prescribed by the County's Official Schedule of Fees.

- B. Aggregated WECS

Applications shall be assessed fees for each WECS construction phase as prescribed by the County's Official Schedule of Fees.

16.11.7 Improvement Location Permit and Building Permit

- A. Commercial WTG towers, non-commercial WTG towers, micro WTG towers, Meteorological Towers, Operational Support Meteorological Towers, and WECS Accessory Buildings, Structures or Facility(ies):
1. All application requirements as set forth in Subsection 16.11, APPLICATION PROCEDURES, together with all other applicable requirements of this Article and the Zoning Ordinance, shall be completed and approved by all required

authorities, federal, state and local, before an Improvement Location Permit or Building Permit is issued.

B. Aggregated WECS

For aggregated WECS, Improvement Location Permits and Building Permits shall be issued individually for each WTG tower, Meteorological Tower and Operational Support Meteorological Tower upon meeting the requirements of this Article and any other applicable provisions of the Zoning Ordinance and compliance with all agreements applicable to the WECS contemplated by this Zoning Ordinance.

16.12 PRE-CONSTRUCTION REQUIREMENTS FOR NON-COMMERCIAL WECS

The Executive Director of the APC shall determine from the requirements set forth in Subsection 16.13 which requirements shall be complied with by the applicant, owner or operator prior to issuance of an Improvement Location Permit or a Building Permit for a non-commercial WECS. The Executive Director of the APC may, upon proper agenda notice, assign any question, general or as to a specific non-commercial WECS application, for discussion and/or instruction from the BZA. An applicant for a non-commercial WECS may appeal the requirement, decision or determination of the Executive Director in the manner prescribed by applicable Rules of the BZA, the Zoning Ordinance and statute(s).

16.13 PRE-CONSTRUCTION REQUIREMENTS FOR COMMERCIAL WECS

That prior to the issuance of an Improvement Location Permit and a Building Permit, and in addition to all other application requirements and any other requirements for the applicant, owner and/or operator to be in compliance with the Zoning Ordinance, the following shall be submitted to the Executive Director of the APC:

(A) Form, Content and Title of Agreements

The plans and agreements set forth in Subsections 16.13.1 (Decommissioning Plan and Decommissioning Agreement), 16.13.2 (Economic Development, Drainage, and Road Use and Maintenance Agreements), 16.13.3 (Erosion Control Plan), 16.13.4 (Utility Plan), 16.13.5 (Avoidance and Mitigation of Damages to Public Infrastructure), 16.15 (Construction Requirements) and 16.16.1 (Road Repairs) may be merged into one or more agreements. Any agreement title or document name/designation made by the parties shall be sufficient provided such plans and agreements are in compliance with the requirements of the Zoning Ordinance and all other requirements of applicable federal, state and local laws, rules, regulations and ordinances.

16.13.1 Decommissioning Plan and Decommissioning Agreement

(A) Decommissioning Plan and a Decommissioning Agreement.

16.13.2 Economic Development, Drainage, and Road Use and Maintenance Agreements

An Economic Development Agreement, a Drainage Agreement, and a Road Use and Maintenance Agreement approved by the Board of County Commissioners of Randolph County, Indiana. The Economic Development Agreement shall be developed in conjunction with the Randolph County Community Economic Development Foundation. The Drainage Agreement must prescribe or reference provisions to address crop and field tile damages and repairs thereof.

16.13.3 Erosion Control Plan

An erosion control plan developed in consultation with the Natural Resources Conservation Services (NRCS), and any storm water quality management plan adopted by the applicable jurisdiction(s).

16.13.4 Utility Plan

A utility plan drawn to the same scale as the site plan illustrating the location of all underground utility lines associated with the entire WECS.

16.13.5 Avoidance and Mitigation of Damages to Public Infrastructure

In addition to complying with the approved Road Use and Maintenance Agreement, an applicant, owner, and/or operator proposing to use any county road(s), for the purposes of transporting any component of a commercial WECS, substation and/or any other equipment for the construction, operation or maintenance of a commercial WECS shall comply with the following pre-construction requirements.

(i) Identification of road and services

All roads and services, to the extent that all proposed routes that will be used for transportation of construction materials, construction of the WECS, and/or maintenance of the WECS shall be identified. If the route includes a public road, such route shall be approved by the Randolph County Highway Department Superintendent.

(ii) Pre-construction survey

The applicant, owner and/or operator shall conduct a pre-construction baseline survey in coordination with, and acceptable to, the Randolph County Highway Superintendent and such survey shall be a part of the Road Use and Maintenance Agreement to determine existing road conditions for assessing current needed improvements and potential future damage. The survey shall include, but not be limited to, photographs, and/or video, or a combination thereof, and a written

agreement to document the condition of the public facility as the same exists on the date of the baseline survey.

16.14 AMENDMENTS AND CHANGES TO THE PRELIMINARY SITE PLAN

Any change of location of any WTG and any material change in the location of other WECS facilities and any material change in the method of the WECS operation shall at the time any such change is made, the same shall be furnished to the Executive Director of the APC, Building Commissioner, Highway Superintendent, County Surveyor and any other person(s) designated and authorized by the Board of County Commissioners. It shall be the duty and responsibility of the applicant, owner and/or operator to obtain any variance required by such change and to comply with any other requirement necessitated by such change. Any variance required by this Section shall be obtained prior construction or implementation of such change.

16.15 CONSTRUCTION REQUIREMENTS

During construction, the applicant shall demonstrate and document to the satisfaction of the Building Commissioner, Highway Superintendent, County Surveyor, Executive Director of the APC and any other person(s) designated and authorized by the Board of County Commissioners, that the following requirements are being met:

16.15.1 Dust control

All reasonable dust control measures required by the Board of County Commissioners during construction of the WECS are being followed together with any additional steps or adjustments for dust control which may from time to time be required by the Board of County Commissioners.

16.15.2 Drainage

Reasonable storm water best management practices as required by the approved Drainage Plan/Agreement.

16.16 POST-CONSTRUCTION REQUIREMENTS FOR ALL WECS

Post-construction, the applicant shall comply with the following provisions:

16.16.1 Road Repairs

Any road damage caused by the transport of any matter or material utilized in any way regarding the WECS, in the construction of the WECS, the installation of the same, and/or the removal and decommissioning of the same, shall be repaired to the satisfaction of the Randolph County Highway Department Superintendent (as per the Road Use and Maintenance Agreement). The Superintendent may choose to require either remediation of road(s) upon completion of the WECS or said Superintendent is authorized to collect

fees for oversized load permits. Further, a corporate surety bond in an amount to be determined by a professional highway engineer selected by the Board of County Commissioners may be required by the Superintendent to insure Randolph County that future repairs are completed to the satisfaction of the unit(s) of local government. The cost of such bond shall be paid by the WECS applicant, owner and/or operator and said bond shall remain in full force and affect until the Decommissioning Plan and Decommissioning Agreement are fully completed as prescribed by this Zoning Ordinance and the Decommissioning Agreement.

16.16.2 As-Built Plans Requirement

Where upon completion of all development, the exact measurements of the location of utilities, structures and components erected during the development are necessary for public record and shall therefore be recorded. The applicant, owner, and/or operator shall submit a copy of the Final Construction Plans (as-built plans), if amended, said Plans shall be submitted as amended, to the Executive Director of the APC with the exact measurements shown thereon. Said Executive Director, after being satisfied that the measurements are substantially the same as indicated on the originally approved final plan(s) or as the same were from time to time amended, shall approve, date and sign said Construction Plans for the WECS, which the applicant, owner, and/or operator shall then record.

16.16.3 Change in ownership

It is the duty and responsibility of the WECS applicant, WECS owner and/or WECS operator and any subsequent WECS owner and WECS operator, in addition to the notice requirements of any WECS plan(s) and WECS agreement(s) to notify by written affidavit the Executive Director of the APC of any change in the ownership of the WECS or any part of the ownership thereof and/or any change of any description whatsoever in the operation of a WECS during the life of the WECS, to and through the time that the final Decommissioning Plan and Decommissioning Agreement are concluded and all applicable acceptances, releases and performance standards of any description have been met and concluded and accepted by the appropriate local, state, federal or private authority, department, agency, and person(s) and all financial payments or other financial obligations are fully satisfied and all appropriate parties are in receipt thereof. In order for the owner and/or operator to inform said Executive Director of the required information regarding changes as herein provided, said notice shall be sent by certified mail with certified funds for any required recording fees and any other applicable fee(s) to the Executive Director of the Area Planning Commission of Randolph County, Indiana, 325 South Oak Street, Suite 204, Winchester, Indiana 47394, or by personally delivering the same to said Executive Director.

16.17 DEFINITIONS

See Article XIII of this Ordinance.